IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.510 OF 2001

Satosh Krishna Mukane,
Life Convict No.C/11816
at present: Circle No.1,
Yerawade Central Prison,
Pune-411 006. .... Appellant

- Versus -

The State of Maharashtra .... Respondent

Shri M.K. Kocharekar, Advocate (appointed)
for the Appellant/Original Accused No.3.

Smt. V.R. Bhonsale, Addl. Public Prosecutor,
for the State.

CORAM: N.V. DABHOLKAR &
Smt.V.K. TAHILRAMANI, JJ.

DATED: JANUARY 13, 2006

ORAL JUDGMENT (Per N.V.Dabholkar, J.):

1. By the impugned Judgment, the appellant/original accused No.3 is held guilty of the offence punishable under Section 302 of the Indian Penal Code (IPC) and is sentenced to life imprisonment and fine of Rs.5000/- i.d. RI for one year. The Judgment was delivered by IInd Additional Sessions Judge, Thane in Sessions Case No.945 of 1998 on 25-1-2001.

2. According to the prosecution, the incident in question took place on 25-5-1998, at about 19:00 hours, at the residential place of the three accused at Village

Janval, Taluka Bhiwandi, District Thane. There is no dispute that accused No.3 is the son-in-law of victim Saman Sukrya Waghe. Accused Nos.1 and 2 are his parents. According to the prosecution story, PW-2 Jayashree Saman Waghe was married to accused No.3 about one-and-half years ago. In fact, it is the claim of the prosecution witnesses that the house of the parents of Jayashree and the house of the accused are opposite to each other, separated by a distance of about 100 feets. At the material time, Jayashree was staying with her parents, having been expelled by her husband. It is narrated by PW-1 Draupadi Saman Waghe (mother of PW-2 Jayashree and mother-in-law of the appellant) that after the initial period of happy cohabitation, demands started flowing from the accused for cash, consequently there were quarrels between the spouses. The accused started ill-treating Jayashree and ultimately drove her out after beating. Attempts on the part of the parents of Jayashree to persuade the accused did not bear the desired results and hence at the material time Jayashree was staying with her parents. It is said that in fact Jayashree was his second wife, the first wife being issueless.

On the date of the incident, it is alleged that accused No.1 Kamali (mother of the appellant) came to the residence of the complainant Draupadi and she

invited the victim Saman to their place. Saman accompanied her. It is the claim of Draupadi that the accused persons offered him liquor. Accused No.2 Krishna and the victim Saman consumed liquor together. Thereafter, accused No.1 threw chilli powder in the eyes of Saman, accused No.2 caught his hands and accused No.3 stabbed Saman with a knife on his stomach. In fact, Jayashree had followed her father and she was trying to hear the conversation by standing at the side of the entrance door of the house of the accused. It is the claim of Draupadi that she witnessed the assault by standing at the entrance door of her own house. Jayashree is more fair as a witness. She claims that she could not see what happened inside the house but she could see all the accused running out from the house and at that time accused No.3 was armed with a blood stained knife.

Yeshwant, brother of Jayashree and son of the victim, invited Police Patil (PW-4 Ashok) who owns a rickshaw. The victim was taken to police station, Padgha, then to Bhiwandi and then to Thane. He was declared dead at the Thane hospital at late midnight hours and hence Draupadi lodged report to the police station in the morning. Thus, FIR (Exhibit-16) happened to be registered at 08:30 hours on 26-5-1998, although the incident had occurred on 25-5-1998 at about 7:00

p.m.

Upon this story, after completion of the investigation, charge-sheet came to be filed in the Court of Judicial Magistrate, First Class, Bhiwandi against all the three and after committal of the trial, the learned Sessions Judge has convicted only accused No.3 for the offence punishable under Section 302 of the IPC. His parents are acquitted of all the charges for the offences punishable under Sections 302, 504 and 506 r/w Section 34 of the IPC. The State having preferred no appeal against the said acquittal, we are not required to consider the prosecution case as against the original accused Nos.1 and 2.

3. Apart from the witnesses already referred during the narration of the prosecution story, the prosecution has examined as PW-3 one Madhukar Gopal Waghe, who happens to be neighbour of the accused and nephew of the deceased. He has also claimed to have come out from his house upon hearing commotion and to have seen the three accused running away. He has supported the deposition of Jayashree to have seen accused No.3 armed with a knife while they were departing.

Remaining witnesses are those who have participated in the investigation. Dr. Sudhakar Jadhav

(PW-8) is the Medical Officer attached to Civil Hospital, Thane. He had performed the post-mortem and he has opined that the death of Saman was caused due to haemorrhagic shock due to stab injury over the right chest lower aspect causing injury to liver coupled with haemoperitonium. As can be seen from the details in the post-mortem report, the injury has started at a location below the mammary gland and internally which is above the diaphragm, cut across the diaphragm right lobe of liver and thus damaged peritonial cavity. PW-6 Sitaram is the panch witness to the panchnama Exhibit-28 which was drawn in his presence. The other panch witness Gurunath Raut (PW-5) supported the prosecution to the extent of the arrest panchnama Exhibit-24 but he turned volte-face when it was his turn to depose about the discovery at the instance of the accused. PW-7 PSI Prabhakar Shinde is the investigating officer in the matter.

4. Upon reference to the impugned Judgment, for the reasons discussed in paragraphs 7 and 8, the learned Judge held the death to be homicidal on the basis of the medical evidence. He has discussed the history of the matrimonial life of accused No.3 with PW-2 Jayashree by taking details from the FIR and arrived at the conclusion that probably this discordant note in the matrimonial life of accused No.3 was the motive for his

being enraged against his father-in-law. By relying upon the depositions of Draupadi and Jayashree, he has held the prosecution to have established the motive. He was not inclined to disbelieve the witnesses merely because they were related to the victim. Finding from the spot panchnama that there were blood stains inside the house of the accused, the learned Judge was convinced that the incident occurred inside the residence of the accused. He has also relied upon the evidence of the witnesses i.e. Jayashree and Draupadi, who deposed to have seen the victim lying inside the house of the accused persons. By relying upon the suggestion to panch witness Sitaram, as put by the defence, the learned Judge accepted that although the houses of the deceased and the accused are separated by a distance of more than 100 feet, there being only open space between the two, it was possible that occurrence in one house could be seen from the other, yet the trial Court has preferred to err on the safer side. He has felt that from so much distance the witness Draupadi could not witness particular overt acts as attributed by her to each of the accused during her deposition. Admittedly, Jayashree was trying to hear the conversation but was not in a position to see the occurrence inside the house. He has taken into consideration the subsequent conduct of the accused persons who tried to desert their own house immediately

after the victim was slain by a stab and that accused No.3 was armed with a knife even while running away. The learned Judge is of the view that the evidence of Jayashree was amply corroborated by PW-3 Madhukar who had also seen the accused persons running away. Some support is drawn from the evidence of the Police Patil.

Although it was contended by the defence before the trial Court that there is delay in lodging the FIR because the same was registered on the next morning, the trial Court felt that medical assistance to the victim was of paramount importance immediately after the incident at 7:00 p.m., it was practically past midnight by the time Saman was declared dead by the doctor at Thane and therefore Draupadi, by registering the FIR at 8:30 a.m., could not be presumed or said to have presented exaggerated or embellished version to the police station.

5. It may be summarised that the trial Court has held the case to be true as against accused No.3 on following circumstances:

(i) the incident occurring inside the house of the accused;

(ii) accused deserting their own house immediately

after the incident;

(iii) while fleeing away accused No.3 was armed with a knife, and

(iv) the death to be homicidal.

6. Heard Advocate Shri M.K. Kocharekar for the appellant and A.P.P. Smt. V.R. Bhonsale for the respondent-State.

Shri Kocharekar has strenuously taken us through the depositions of the main witnesses i.e. Draupadi and Jayashree and he has also taken us through the impugned Judgment. Although he has also not raised any challenge against the medical evidence of Dr. Sudhakar Jadhav, he desired us to disbelieve the evidence about the discovery at the instance of the accused. This is because one panch on the point examined by the prosecution, namely, Gurunath has not supported the prosecution and the prosecution has not gone to examine the second panch on the said memorandum and discovery but preferred to get it proved through the deposition of the investigating officer PSI Prabhakar Shinde. We must not hesitate to say that, irrespective of the fact whether evidence regarding discovery under Section 27 of the Indian Evidence Act is trustworthy or otherwise, the

significance of discovery evidence is lost because of the report of the analysis. When we refer to the report of the forensic science laboratory at Exhibit-36, it is evident that although the knife, which is at serial No.3, is reported to have been stained with blood, the analysis results are inconclusive and the laboratory has not even confirmed the same to be human blood, much less it has determined the group of the blood. The prosecution is, therefore, required to rely upon the circumstantial evidence without the assistance of the forensic science laboratory and the evidence regarding discovery at the instance of the accused. We are, therefore, disinclined to discuss many more details from the memorandum of statement of the accused and the discovery panchnama (Exhibit-30) and the evidence of the investigating officer on that aspect.

7. We need not dilate upon the reasons recorded by the trial Court regarding the acquittal of accused Nos.1 and 2. Although he has not discussed his reasons in so many words, we are inclined to concur with him that the ocular accounts of the overt acts of each individual accused, as tried to be given by the complainant Draupadi, same is not convincing one. In order to support our concurrence, we may only point out that although it is the case of Draupadi that initially chilly powder was thrown in the eyes of the victim by

accused No.1, on reference to the post-mortem note we find no traces of chilly powder in the eyes of the victim. We are also not relying upon the evidence of Draupadi in order to draw inference that present appellant must be the assailant who inflicted the injury upon the person of Saman but the evidence of Draupadi can be accepted safely to the extent that victim Saman was called by accused No.1 Kamali and he was taken to the place of the accused for the purpose of discussion regarding the matrimonial dispute of Jayashree and accused No.3. In spite of vehement argument by Advocate Shri Kocharekar that Jayashree is required to be disbelieved because she is an interested witness, we are not in agreement with such a submission. Although Jayashree is the daughter of the victim, she is also the wife of the appellant. She has deposed against the appellant/accused at the cost of her matrimonial life. No doubt, she may carry some grudge because she is expelled from the house. But when her father was invited for a discussion, there were chances and the chances for reconciliation would stand ruled out in toto when she deposes against the accused. While deposing against the accused, Jayashree has shown willingness to pay the price of the same and we are therefore not inclined to say that Jayashree is more close to the father and therefore she can narrate a false story against her husband, accused No.3.

Fairness on the part of Jayashree is clear from her admission that she was not in a position to see what was happening inside the house. This is because she was trying to listen the conversation inside the house by standing by the side of the entrance door and not in front of the entrance door of the house of the accused. When her father was invited to discuss her fate, it is most natural on the part of Jayashree to follow the father, keep herself beyond the sight of her in-laws but be so close to the door that she could hear some conversation. Jayashree, therefore, was in a quite natural position to witness the departure of the accused from their own house.

It is at this stage that we need to refer to the panchnama of the spot of incident (Exhibit-28). The spot of occurrence was shown by the complainant Draupadi. At a location of four feet from the entrance, a stone was found having blood stains. Unfortunately, the panchnama does not record whether the stone is four feet inside the entrance door or outside. In any case, the blood stained stone is very close to the house of the accused.

We cannot ignore the evidence of Jayashree as also PW-3 Madhukar Waghe. Both of them have seen the

accused fleeing away from the house and at that time accused No.3 being armed with a knife. Witness Madhukar has narrated to have seen the injured Saman lying in the door of the house of the accused and to this statement on his part, beyond bare suggestion, there is no successful challenge by the defence. It may not be out of place to say that the cross-examination of Jayashree, as also that of Madhukar, is cryptic and does not draw out any material from which we can look to the evidence of these two witnesses with doubt. We therefore feel that the trial Court committed no error in believing these two witnesses and accepting the fact to have been proved, that accused fled away from their own house and while running away, accused No.3 was armed with a knife.

8. As a result of the discussion hereinabove, the prosecution fairly establishes that the victim was called by accused No.1 and taken to the residence of the accused immediately before the incident; three accused had ran away from their house and accused No.3 was then armed with a knife; at that juncture the witnesses had noticed victim Saman lying injured at the entrance door of the house of the accused. We feel that this triplate of circumstances leaves no other view possible than an inference that it must be accused No.3 who must have inflicted the stab injury upon the victim.

As rightly observed by the trial Court, since all three accused ran away, there may be some role played by accused Nos.1 and 2 but in view of an isolated stab injury, overt acts on the part of accused Nos.1 and 2 cannot be imagined and they cannot be held guilty for murder merely because they also ran away with accused No.3. Of course, there is no appeal against their acquittal by the State.

9. At this stage, Advocate Shri Kocharekar, relying upon the fact that there is a single stab injury, which has caused the death, urged that this is a case which would fall within the ambit of Section 304 Part II of the IPC and not under Section 302 of the IPC. No doubt, the victim has died as a result of a single blow. But the weapon used and the location on the person of the victim selected by the appellant does not enable us to believe that the accused either did not intend to kill or that he did not intend to inflict such an injury which in the ordinary course of nature would result into death. The external injury is just below the mammary gland. The internal damage indicates that the blow was from above to below and that is why the weapon, although it has entered the thoracic cavity above the diaphragm, it has penetrated beyond the diaphragm and sliced the lobe of the liver. This speaks also regarding the force with which the single blow must have been dealt. In the

light of the observations by the Supreme Court in the matter of **Virsa Singh v. State of Punjab,** reported in AIR 1958 SC 465, unless and until the defence can demonstrate that the injury inflicted was unintentional or accidental, it is not open for the defence to claim that it is a culpable homicide not amounting to murder. We, therefore, reject the second argument of the learned counsel for the appellant.

10. Consequently, the appeal fails and the same is dismissed.

The Registrar (Judicial) shall ensure supply of certified copy of this Judgment, free of cost, to the appellant in prison through the prison authorities.

Advocate Shri Kocharekar was appointed at the cost of the State for prosecuting the appeal on behalf of the prisoner. We quantify his professional charges at Rs.2500/-.

(Smt. V.K.Tahilramani, J.) **(N.V.Dabholkar, J.)**